S T A T E   O F   N E W   Y O R K

2743

2009-2010 Regular Sessions

I N   S E N A T E

March 2, 2009

Introduced by Sens. GOLDEN, DeFRANCISCO, LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to providing for a modification of elementary and secondary school tuition for personal income tax purposes; and repealing certain provisions of such laws relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subsection (j) of section 612 of the tax law is REPEALED and a new subsection (j) is added to read as follows:

(J) TUITION TAX DEDUCTION. (1) GENERAL. AN INDIVIDUAL SHALL BE ENTITLED TO SUBTRACT FROM HIS OR HER FEDERAL ADJUSTED GROSS INCOME AN AMOUNT NOT EXCEEDING THE AMOUNT SHOWN IN THE TABLE SET FORTH IN THIS PARAGRAPH, MULTIPLIED BY THE NUMBER OF DEPENDENTS ATTENDING AN ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL ON A FULL-TIME BASIS FOR AT LEAST THREE MONTHS DURING THE REGULAR SCHOOL YEAR FOR THE EDUCATION OF SUCH DEPENDENT IN GRADES KINDERGARTEN THROUGH TWELVE, PROVIDED SUCH INDIVIDUAL IS ALLOWED AN EXEMPTION UNDER SECTION SIX HUNDRED SIXTEEN OF THIS PART FOR SUCH DEPENDENT. PROVIDED, FURTHER, THAT THE DEDUCTION UNDER THIS PARAGRAPH SHALL NOT EXCEED THE AMOUNT PAID FOR EACH SUCH DEPENDENT IN TUITION TO SUCH ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL FOR SUCH EDUCATION OF SUCH DEPENDENT.

(A) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2009,

IF THE FEDERAL ADJUSTED GROSS INCOME IS:	THE AMOUNT ALLOWABLE FOR EACH DEPENDENT IS:
LESS THAN $115,000	$2,500
115,000--119,999	2,150
120,000--124,999	1,800

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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125,000--129,999	1,450
130,000--134,999	1,100
135,000--139,999	750
140,000--144,999	400
145,000--149,999	50
150,000 AND OVER	0

(B) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2010,

IF THE FEDERAL ADJUSTED GROSS INCOME IS:	THE AMOUNT ALLOWABLE FOR EACH DEPENDENT IS:
LESS THAN $115,000	$5,000
115,000--119,999	4,300
120,000--124,999	3,600
125,000--129,999	2,900
130,000--134,999	2,200
135,000--139,999	1,500
140,000--144,999	800
145,000--149,999	100
150,000 AND OVER	0

(C) FOR THE TAXABLE YEARS BEGINNING JANUARY 1, 2011,

IF THE FEDERAL ADJUSTED GROSS INCOME IS:	THE AMOUNT ALLOWABLE FOR EACH DEPENDENT IS:
LESS THAN $115,000	$7,500
115,000--119,999	6,450
120,000--124,999	5,400
125,000--129,999	4,350
130,000--134,999	3,300
135,000--139,999	2,250
140,000--144,999	1,200
145,000--149,999	150
150,000 AND OVER	0

(D) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2012 AND THEREAFTER,

IF THE FEDERAL ADJUSTED GROSS INCOME IS:	THE AMOUNT ALLOWABLE FOR EACH DEPENDENT IS:
LESS THAN $115,000	$10,000
115,000--119,999	8,750
120,000--124,999	7,500
125,000--129,999	6,250
130,000--134,999	5,000
135,000--139,999	3,750
140,000--144,999	2,500
145,000--149,999	1,250
150,000 AND OVER	0

(2) HUSBAND AND WIFE. IN DETERMINING THE APPLICABLE FEDERAL ADJUSTED GROSS INCOME OF A HUSBAND AND WIFE WHO FILE JOINTLY ON THEIR FEDERAL TAX RETURN, WHETHER OR NOT THEY FILE SEPARATE NEW YORK STATE RETURNS, FOR PURPOSES OF THE TABLE SET FORTH IN PARAGRAPH ONE OF THIS SUBSECTION, THE FEDERAL ADJUSTED GROSS INCOME OF A HUSBAND AND WIFE SHALL BE THE AGGREGATE OF THEIR FEDERAL ADJUSTED GROSS INCOMES FOR THE TAXABLE YEAR. THE HUSBAND OR WIFE TAXPAYER WHO CLAIMS AN EXEMPTION FOR THE DEPENDENT ON HIS OR HER NEW YORK STATE INCOME TAX RETURN SHALL BE

ALLOWED TO TAKE THE DEDUCTION PRESCRIBED IN PARAGRAPH ONE OF THIS SUBSECTION.

(3) DEFINITIONS. (A) "TUITION", AS USED IN THIS SUBSECTION, SHALL MEAN THE AMOUNT ACTUALLY PAID DURING THE TAXABLE YEAR BY THE TAXPAYER FOR THE ENROLLMENT OF A DEPENDENT DURING THE REGULAR SCHOOL YEAR AT AN ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL.

(B) "NONPUBLIC SCHOOL", AS USED IN THIS SUBSECTION, SHALL MEAN ANY NON-PROFIT ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK, OTHER THAN A PUBLIC SCHOOL, WHICH (I) IS PROVIDING INSTRUCTION IN ACCORDANCE WITH ARTICLE SEVENTEEN AND SECTION THIRTY-TWO HUNDRED FOUR OF THE EDUCATION LAW, (II) HAS NOT BEEN FOUND TO BE IN VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF NINETEEN HUNDRED SIXTY-FOUR, 78 STAT. 252, 42 U.S.C. SEC. 2000 (D) AND (III) WHICH IS ENTITLED TO A TAX EXEMPTION UNDER SECTIONS FIVE HUNDRED ONE (A) AND FIVE HUNDRED ONE (C) (3) OF THE INTERNAL REVENUE CODE. THE COMMISSIONER OF EDUCATION SHALL FURNISH TO THE COMMISSIONER BY JANUARY FIRST OF EACH YEAR, A CERTIFIED LIST OF NONPUBLIC SCHOOLS WHICH COMPLY WITH CLAUSE (I) OF THIS SUBPARAGRAPH FOR THE PRECEDING CALENDAR YEAR AND SHALL PROVIDE SUCH OTHER ASSISTANCE WITH RESPECT TO WHETHER NONPUBLIC SCHOOLS COME WITHIN SUCH CLAUSE (I) AS THE COMMISSIONER MAY REQUIRE.

(C) "PUBLIC SCHOOL", AS USED IN THIS SUBSECTION, SHALL MEAN ANY ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK THAT IS SUBJECT TO THE SUPERVISION OF THE COMMISSIONER OF EDUCATION PURSUANT TO SECTION THREE HUNDRED NINE OF THE EDUCATION LAW. PUBLIC SCHOOL SHALL INCLUDE ANY CHARTER SCHOOL ORGANIZED PURSUANT TO ARTICLE FIFTY-SIX OF THE EDUCATION LAW.

(D) "REGULAR SCHOOL YEAR", AS USED IN THIS SUBSECTION, SHALL MEAN THE MONTHS OF THE TAXABLE YEAR EXCLUSIVE OF JULY AND AUGUST.

(4) ADDITIONAL INFORMATION. ANY CLAIM FOR A MODIFICATION UNDER THIS SUBSECTION SHALL BE ACCOMPANIED BY SUCH INFORMATION AS THE COMMISSIONER MAY REQUIRE.

S 2. Subdivision (j) of section 11-1712 of the administrative code of the city of New York is REPEALED and a new subdivision (j) is added to read as follows:

(J) TUITION TAX DEDUCTION. (1) GENERAL. AN INDIVIDUAL SHALL BE ENTITLED TO SUBTRACT FROM HIS OR HER FEDERAL ADJUSTED GROSS INCOME AN AMOUNT NOT EXCEEDING THE AMOUNT SHOWN IN THE TABLE SET FORTH IN THIS PARAGRAPH, MULTIPLIED BY THE NUMBER OF DEPENDENTS ATTENDING AN ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL ON A FULL-TIME BASIS FOR AT LEAST THREE MONTHS DURING THE REGULAR SCHOOL YEAR FOR THE EDUCATION OF SUCH DEPENDENT IN GRADES KINDERGARTEN THROUGH TWELVE, PROVIDED SUCH INDIVIDUAL IS ALLOWED AN EXEMPTION UNDER SECTION 11-1716 OF THIS SUBCHAPTER FOR SUCH DEPENDENT. PROVIDED, FURTHER, THAT THE DEDUCTION UNDER THIS PARAGRAPH SHALL NOT EXCEED THE AMOUNT PAID FOR EACH SUCH DEPENDENT IN TUITION TO SUCH ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL FOR SUCH EDUCATION OF SUCH DEPENDENT.

(A) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2009,

IF THE FEDERAL ADJUSTED GROSS INCOME IS:	THE AMOUNT ALLOWABLE FOR EACH DEPENDENT IS:
LESS THAN $115,000	$2,500
115,000--119,999	2,150
120,000--124,999	1,800
125,000--129,999	1,450
130,000--134,999	1,100

135,000--139,999	750
140,000--144,999	400
145,000--149,999	50
150,000 AND OVER	0

(B) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2010,

IF THE FEDERAL ADJUSTED GROSS INCOME IS:	THE AMOUNT ALLOWABLE FOR EACH DEPENDENT IS:
LESS THAN $115,000	$5,000
115,000--119,999	4,300
120,000--124,999	3,600
125,000--129,999	2,900
130,000--134,999	2,200
135,000--139,999	1,500
140,000--144,999	800
145,000--149,999	100
150,000 AND OVER	0

(C) FOR THE TAXABLE YEARS BEGINNING JANUARY 1, 2011,

IF THE FEDERAL ADJUSTED GROSS INCOME IS:	THE AMOUNT ALLOWABLE FOR EACH DEPENDENT IS:
LESS THAN $115,000	$7,500
115,000--119,999	6,450
120,000--124,999	5,400
125,000--129,999	4,350
130,000--134,999	3,300
135,000--139,999	2,250
140,000--144,999	1,200
145,000--149,999	150
150,000 AND OVER	0

(D) FOR THE TAXABLE YEAR BEGINNING JANUARY 1, 2012 AND THEREAFTER,

IF THE FEDERAL ADJUSTED GROSS INCOME IS:	THE AMOUNT ALLOWABLE FOR EACH DEPENDENT IS:
LESS THAN $115,000	$10,000
115,000--119,999	8,750
120,000--124,999	7,500
125,000--129,999	6,250
130,000--134,999	5,000
135,000--139,999	3,750
140,000--144,999	2,500
145,000--149,999	1,250
150,000 AND OVER	0

(2) HUSBAND AND WIFE. IN DETERMINING THE APPLICABLE FEDERAL ADJUSTED GROSS INCOME OF A HUSBAND AND WIFE WHO FILE JOINTLY ON THEIR FEDERAL TAX RETURN, WHETHER OR NOT THEY FILE SEPARATE NEW YORK STATE RETURNS, FOR PURPOSES OF THE TABLE SET FORTH IN PARAGRAPH ONE OF THIS SUBDIVISION, THE FEDERAL ADJUSTED GROSS INCOME OF A HUSBAND AND WIFE SHALL BE THE AGGREGATE OF THEIR FEDERAL ADJUSTED GROSS INCOMES FOR THE TAXABLE YEAR. THE HUSBAND OR WIFE TAXPAYER WHO CLAIMS AN EXEMPTION FOR THE DEPENDENT ON HIS OR HER NEW YORK CITY INCOME TAX RETURN SHALL BE ALLOWED TO TAKE THE DEDUCTION PRESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVISION.

(3) DEFINITIONS. (A) "TUITION", AS USED IN THIS SUBDIVISION, SHALL MEAN THE AMOUNT ACTUALLY PAID DURING THE TAXABLE YEAR BY THE TAXPAYER FOR THE ENROLLMENT OF A DEPENDENT DURING THE REGULAR SCHOOL YEAR AT AN ELEMENTARY OR SECONDARY PUBLIC OR NONPUBLIC SCHOOL.

(B) "NONPUBLIC SCHOOL", AS USED IN THIS SUBDIVISION, SHALL MEAN ANY NON-PROFIT ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK, OTHER THAN A PUBLIC SCHOOL, WHICH (I) IS PROVIDING INSTRUCTION IN ACCORDANCE WITH ARTICLE SEVENTEEN AND SECTION THIRTY-TWO HUNDRED FOUR OF THE EDUCATION LAW, (II) HAS NOT BEEN FOUND TO BE IN VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF NINETEEN HUNDRED SIXTY-FOUR, 78 STAT. 252, 42 U.S.C. SEC. 2000 (D) AND (III) WHICH IS ENTITLED TO A TAX EXEMPTION UNDER SECTIONS FIVE HUNDRED ONE (A) AND FIVE HUNDRED ONE (C) (3) OF THE INTERNAL REVENUE CODE. THE COMMISSIONER OF EDUCATION SHALL FURNISH TO THE COMMISSIONER BY JANUARY FIRST OF EACH YEAR, A CERTIFIED LIST OF NONPUBLIC SCHOOLS WHICH COMPLY WITH CLAUSE (I) OF THIS SUBPARAGRAPH FOR THE PRECEDING CALENDAR YEAR AND SHALL PROVIDE SUCH OTHER ASSISTANCE WITH RESPECT TO WHETHER NONPUBLIC SCHOOLS COME WITHIN SUCH CLAUSE (I) AS THE COMMISSIONER MAY REQUIRE.

(C) "PUBLIC SCHOOL", AS USED IN THIS SUBDIVISION, SHALL MEAN ANY ELEMENTARY OR SECONDARY SCHOOL IN THE STATE OF NEW YORK THAT IS SUBJECT TO THE SUPERVISION OF THE COMMISSIONER OF EDUCATION PURSUANT TO SECTION THREE HUNDRED NINE OF THE EDUCATION LAW. PUBLIC SCHOOL SHALL INCLUDE ANY CHARTER SCHOOL ORGANIZED PURSUANT TO ARTICLE FIFTY-SIX OF THE EDUCATION LAW.

(D) "REGULAR SCHOOL YEAR", AS USED IN THIS SUBDIVISION, SHALL MEAN THE MONTHS OF THE TAXABLE YEAR EXCLUSIVE OF JULY AND AUGUST.

(4) ADDITIONAL INFORMATION. ANY CLAIM FOR A MODIFICATION UNDER THIS SUBDIVISION SHALL BE ACCOMPANIED BY SUCH INFORMATION AS THE COMMISSIONER MAY REQUIRE.

S 3. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2009.